

GENERAL LEAVE

President Harry Truman signed Executive Order 9981, mandating the equal treatment of all persons in the armed services without regard to race, color, religion or national origin. In addition to beginning the process of immigration, Executive Order 9981 also established the President's Committee on Equality of Treatment and Opportunity in the Armed Services. While it would take years for the integration of the armed services to be completed, it was Executive Order 9981 which began to pave the path to unity.

The Revolutionary War was spurred by a document, the Declaration of Independence, which proclaimed, "All men are created equal". Many African Americans fought in the Revolution, while experiencing unequal treatment. Another document, Executive Order 9981, authored by President Truman, was able to begin the integration of the armed services, which ended this pervasive inequality and segregation. The signing of Executive Order 9981 was a pivotal moment in our history and I wholeheartedly support its commemoration.

I commend my colleagues, Representatives MIKE ROGERS and KENDRICK MEEK, for bringing this legislation to the floor.

Mr. COURTNEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Connecticut (Mr. COURTNEY) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 297, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the ayes have it.

Mr. ROGERS of Alabama. Mr. Speaker, on that I demand the yeas and nays. The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

REGULATORY IMPROVEMENT ACT OF 2007

Mr. SCHIFF. Mr. Speaker, I move to suspend the rules and concur in the Senate amendment to the bill (H.R. 3564) to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States through fiscal year 2011, and for other purposes.

The Clerk read the title of the bill.

The text of the Senate amendment is as follows:

Senate amendment:

On page 2, lines 9 through 11, strike "\$1,000,000 for fiscal year 2008, \$3,300,000 for fiscal year 2009, \$3,400,000 for fiscal year 2010, and \$3,500,000 for fiscal year 2011" and insert "\$3,200,000 for fiscal year 2009, \$3,200,000 for fiscal year 2010, and \$3,200,000 for fiscal year 2011".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. SCHIFF) and the gentleman from Texas (Mr. GOHMERT) each will control 20 minutes.

The Chair recognizes the gentleman from California.

Mr. SCHIFF. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. SCHIFF. I yield myself such time as I may consume.

Mr. Speaker, the Federal regulation process is one of the most important ways by which our Nation implements public policy. Each year, agencies issue thousands of regulations to promote safety in our lives, from the food we eat, to the cars we drive, to the air we breathe.

Although regulations play a critical role in protecting so many aspects of our daily lives, there is no independent, nonpartisan entity that Congress can rely upon to help us ensure that these regulations are working as intended.

The Administrative Conference of the United States was just such an entity, a public-private think tank that provided invaluable guidance to Congress about how to improve the administrative and regulatory process.

First authorized by President John F. Kennedy, the Conference made numerous recommendations over the course of its 27-year existence, many of which were enacted into law. The conference was last funded into in 1995. H.R. 3564, the Regulatory Improvement Act of 2007, would reauthorize it for 3 years.

Some might ask why we are reauthorizing an entity that has been out of existence for so long. Let me mention three important reasons. First, the Conference can save taxpayer dollars, in fact, millions of dollars. When it was in existence, it helped agencies implement many cost-saving procedures and make numerous recommendations to eliminate excessive litigation costs and long delays.

Just one agency alone, the Social Security Administration, estimated that the Conference's recommendation to change that agency's appeal process yielded approximately \$85 million in savings. Indeed, Justice Stephen Breyer testified before the Subcommittee on Commercial and Administrative Law about the "huge" savings to the public resulting from the Conference's recommendations. Justice Antonin Scalia likewise agreed that it was an enormous bargain.

Second, the Administrative Conference promoted innovation among agencies. For example, it convinced 24 agencies to use alternative dispute resolution for issues concerning the private sector. The Conference also spearheaded implementation of the Negotiated Rulemaking Act, the Equal Access to Justice Act, and the Magnuson-Moss Warranty Act, governing consumer product warranties.

The Conference played a major role in encouraging agencies to promulgate

smarter regulations. It did this by working to improve the public's understanding and participation in the rule-making process, promoting judicial review of agency regulations, and reducing regulatory burdens on the private sector.

Third, and perhaps most importantly, Congress needs the conference. Experience with the Congressional Review Act proves that there are limitations in Congress' ability to provide aggressive oversight of the regulatory process.

Congressional recognition of the Conference's significant contributions to the regulatory process is probably best evidenced by the fact that legislation assigning responsibilities to it continues to be introduced in nearly every Congress, including the current one.

The Congressional Research Service advises that reactivation of the Conference now would come at "an opportune time," especially in light of efforts by the White House to augment its involvement in the regulatory process.

There are few entities that have enjoyed more bipartisan support than the Administrative Conference, and understandably so. It is all about promoting good government.

I commend my colleague, the ranking member of the Subcommittee on Commercial and Administrative Law, CHRIS CANNON of Utah, for his leadership in continuing to pursue reauthorization of the conference.

Last October, the House passed this bill on suspension by voice vote without amendment. The Senate late last month finally acted and passed the bill with a small amendment which essentially reauthorizes the Conference at a level of funding in the amount of \$3.2 million.

I urge my colleagues to concur in the Senate amendment so we can send this bill to the President.

I reserve the balance of my time.

□ 1530

Mr. GOHMERT. Mr. Speaker, I yield myself such time as I may consume.

I thank my friend from California for his work on this bill, and thank the chairman of the committee and also the ranking members of the subcommittee and committee.

I am delighted to see us conclude today our consideration of H.R. 3564 which would reauthorize the Administrative Conference of the United States. The bill we consider today was amended slightly by the Senate which required this action by us today. But I strongly urge the House to concur in the Senate's amendment today. I also urge the Appropriations Committee and the House to appropriate funds promptly to ACUS. We need this exemplary agency once again to become a living, breathing entity and reality.

So why is that? As the distinguished Member from Utah (Mr. CANNON) remarked when we originally voted out the bill, and quoting from prior adage,

"The government that governs best, governs least. And when the government does govern, it should govern at its best." He is exactly right. That is the role of ACUS, to ensure that when the government acts, it acts at its best.

The small appropriations that we historically invested in ACUS yielded us major overall savings in time and in money. ACUS consistently pinpointed ways for the government to reduce the cost it incurs and that it imposes. As we confront the specter of exploding Social Security and Medicare entitlement costs hijacking the Federal budget, we need ACUS all the more. We must do everything we can to avoid waste in our spending and to lighten the government burden on our economy. By reauthorizing and refunding ACUS, we can take important steps in that effort. I again thank the gentleman from California for his work.

I reserve the balance of my time.

Mr. SCHIFF. Mr. Speaker, may I inquire how many more speakers my colleague from Texas has remaining.

Mr. GOHMERT. I have no further speakers, and I yield back the balance of my time.

Mr. SCHIFF. Mr. Speaker, I thank the gentleman from Texas and I thank the Speaker as well as the work of Mr. CANNON of Utah. I urge passage of the bill.

As we have seen most recently in the actions and inactions by the FDA dealing with the salmonella incidents, or whether it is the Consumer Product Safety Commission and some of the issues involving manufactured products from other countries, the regulatory process is extraordinarily important in protecting the American people. Congress is doing its best to oversee these agencies, but we can use the assistance of this important conference, and I join my colleague in urging passage of this bill.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in strong support of H.R. 3564, Regulatory Improvement Act of 2007. The administrative conference was first created inside the Department of Justice by President Kennedy. Later, it was moved out of the Department of Justice by President Johnson. The mission was a private partnership to discuss administrative law and regulatory system and how to make it better. Supreme Court Justices Breyer and Scalia served on the Conference before becoming Justices and both have testified in the past for its reauthorization. This bill reauthorizes the Administrative Conference. I support this bill and I encourage my colleagues to do likewise.

The Administrative Conference of the United States (ACUS), an independent agency and advisory committee created in 1968, studied U.S. administrative processes with an eye to recommending improvements to Congress and agencies. From 1968 to 1995, the ACUS issued approximately 200 recommendations, most of which have been at least partially implemented. Congressional funding for ACUS was terminated in 1995.

ACUS's recommendations were published periodically in the Code of Federal Regulations prior to 1995. Little known "outside the

Beltway," ACUS was a unique entity. Comprised of between 75 and 101 individuals drawn from agencies, academia, and the private sector, the Conference was classified as both an independent agency and a federal advisory committee. Organizationally, it consisted of a Chair, a Council, and an Assembly. The Chair, appointed by the President and confirmed by the Senate for a five-year term, was responsible for the day-to-day activities and supervision of the 18 permanent staff. The Council, which functioned like a board of directors, consisted of ten members appointed by the President for three-year terms, five of whom were always current senior federal officials. The Assembly was made up of the Chair, the Council, and the other members of the Conference, a majority of whom had to come from government service. All of the members (other than the Chair) served without compensation.

The primary, although not exclusive, function of the Conference was to study administrative processes with an eye to recommending improvements to Congress and the agencies. It performed this function by commissioning studies by law professors expert in the administrative process that then were reviewed by one of six standing committees: adjudication, administration, governmental processes, judicial review, regulation, and rulemaking. The recommendations developed by committees of the Conference would be considered for adoption by the Assembly in plenary sessions, which were typically held twice a year.

The improvements occasioned by the Conferences recommendations are legion. Inasmuch as the Conference never had the power to impose its recommendations on unwilling subjects, the fact that so many of its recommendations bore fruit is a testimony to their intrinsic sense. Some, like the Conference's recommendation in 1968, its first year of operation, to eliminate a jurisdictional amount in suits under the APA, were followed by Congress in passing new legislation. Another example is its recommendation to provide administrative penalty authority to agencies to increase the effectiveness of agency enforcement activities at lower cost, first proposed by the Conference in 1972 and since adopted by Congress in over 200 statutes. A third is its 1980 recommended solution to unseemly races to the courthouse in rulemaking appeals, adopted by Congress in 1988.

Other recommendations, like the Conference's early recommendation to eliminate the exemption from the APA's notice-and-comment requirements for rules relating to public property, loans, grants, benefits, and contracts, were sufficiently influential to lead agencies to adopt the recommendations on their own. Its recommendation in 1988 on Presidential Transition Workers' Code of Ethical Conduct were used by President Bush as the basis for his transition standards of conduct, and the Clinton administration likewise followed what had become standard procedures. From 1968 to 1995, the Conference issued approximately 200 recommendations, most of which have been at least partially implemented.

Probably the area in which the Conference had its greatest influence was in introducing and supporting the use of alternative dispute resolution techniques in agency practice. Its recommendation in 1982 provided procedures

by which agencies could negotiate proposed regulations, and it followed the recommendation with support and encouragement to agencies to experiment with this new technique. Ultimately, Congress adopted the Negotiated Rulemaking Act in 1990, virtually copying the procedures contained in the Conference's original recommendation. Similarly, in 1986 the Conference issued the first of some fifteen recommendations on using alternative means of dispute resolution in agency adjudications. In 1990 Congress again followed the Conference's lead and enacted the Administrative Dispute Resolution Act. Recognizing the Conference's leadership role in this area, that Act gave the Conference the principal role for coordinating and promoting ADR in the federal government.

Another area in which the Conference had a major influence involved its study of Presidential review of agency rulemaking undertaken during the Reagan administration. This was a subject that had the potential to become highly partisan, but the Conference's reputation for neutrality and expertise enabled it to review the practice, generally validate its exercise, and makes certain recommendations to improve its openness and public acceptability. Because of the Conference's track record of useful and expert studies of the administrative process, all the regulatory reform bills considered by the Senate in the last session included provisions for the Conference to study the effects of the legislation.

The Conference's contribution to administrative law and procedure was not limited just to studies. Drawing on its expertise, ACUS issued numerous publications designed to assist agencies in their administrative processes. For example, in 1972 the Conference published the first edition of its Manual for Administrative Law Judges (now in its 3d edition); in 1978 it published its Interpretive Guide to the Government in the Sunshine Act; in 1981 it issued Model Rules for Agency Implementation of the Equal Access to Justice Act. The latter two of these documents were responsive to Congress' requirement for agencies to consult with the Conference in implementing these statutes. In addition, the Conference has published sourcebooks on Federal Administrative Procedure, Negotiated Rulemaking, and Alternative Dispute Resolution, as well as the Guide to Federal Agency Rulemaking.

Finally, in recent years, following the collapse of the Soviet Union, Congress authorized the Conference to lend its expertise to newly emerging democracies in their creation of administrative law and procedures. As a result, the Conference sponsored seminars in the Ukraine, Hungary, the People's Republic of China, and South Africa.

The ABA has long been a strong supporter of the Conference, and over the years the Conference and the Section on Administrative Law and Regulatory Practice have enjoyed a close and mutually supportive relationship. This bill reauthorizes the administrative conference.

I support this Act and encourage my colleagues to support it also.

Mr. SCHIFF. I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. SCHIFF) that the House suspend the rules and concur in the Senate amendment to the bill, H.R. 3564.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the Senate amendment was concurred in.

A motion to reconsider was laid on the table.

HONORING THURGOOD MARSHALL ON THE 100TH ANNIVERSARY OF HIS BIRTH

Mr. SCHIFF. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 381) honoring and recognizing the dedication and achievements of Thurgood Marshall on the 100th anniversary of his birth.

The Clerk read the title of the concurrent resolution.

The text of the concurrent resolution is as follows:

H. CON. RES. 381

Whereas Thurgood Marshall was born in Baltimore, Maryland, on July 2, 1908, the grandson of a slave;

Whereas Thurgood Marshall developed an interest in the Constitution and the rule of law in his youth;

Whereas Thurgood Marshall graduated from Lincoln University in Pennsylvania with honors in 1930, but was denied acceptance at the all-white University of Maryland Law School because he was African-American;

Whereas Thurgood Marshall attended law school at Howard University, the country's most prominent black university, and graduated first in his class in 1933;

Whereas Thurgood Marshall served as the legal director of the National Association for the Advancement of Colored People (NAACP) from 1940 to 1961;

Whereas Thurgood Marshall argued 32 cases before the Supreme Court of the United States, beginning with the case of *Chambers v. Florida* in 1940, and won 29 of them, earning more victories in the Supreme Court than any other individual;

Whereas, as Chief Counsel of the NAACP, Thurgood Marshall fought to abolish segregation in schools and challenged laws that discriminated against African-Americans;

Whereas Thurgood Marshall argued *Brown v. Board of Education* before the Supreme Court in 1954, which resulted in the famous decision declaring racial segregation in public schools unconstitutional, overturning the 1896 decision in *Plessy v. Ferguson*;

Whereas Thurgood Marshall was nominated to the United States Court of Appeals for the Second Circuit by President John F. Kennedy in 1961, and was confirmed by the United States Senate in spite of heavy opposition from many Southern Senators;

Whereas Thurgood Marshall served on the United States Court of Appeals for the Second Circuit from 1961 to 1965, during which time he wrote 112 opinions, none of which were overturned on appeal;

Whereas Thurgood Marshall was nominated as Solicitor General of the United States by President Lyndon Johnson, and served as the first African-American Solicitor General from 1965 to 1967;

Whereas Thurgood Marshall was nominated as an Associate Justice of the Supreme Court by President Johnson in 1967, and served as the first African-American member of the Supreme Court;

Whereas Thurgood Marshall sought to protect the rights of all Americans during his 24 years as a justice on the Supreme Court;

Whereas Thurgood Marshall was honored with the Liberty Medal in 1992, in recogni-

tion of his long history of protecting the rights of women, children, prisoners, and the homeless; and

Whereas Thurgood Marshall died on January 24, 1993, at the age of 84: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That Congress—

(1) honors the dedication and achievements of Thurgood Marshall;

(2) recognizes the contributions of Thurgood Marshall to the struggle for equal rights and justice in the United States; and

(3) celebrates the lifetime achievements of Thurgood Marshall on the 100th anniversary of his birth.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. SCHIFF) and the gentleman from Texas (Mr. GOHMERT) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. SCHIFF. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and to include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. SCHIFF. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this resolution commemorates the life and work of Thurgood Marshall on the 100th anniversary of his birth, which was July 2, 1908.

I commend the gentleman from New Jersey (Mr. PAYNE) for his leadership in allowing us to recognize an American whose life work was marked by the principles of justice, equality, and freedom, and I am pleased to cosponsor this legislation.

It is hard to know where to begin in reciting Justice Marshall's accomplishments. While best known for breaking the color barrier on the Supreme Court, Justice Marshall is honored because he was an expert jurist who worked on behalf of all Americans. Born 100 years ago in Baltimore, Maryland, and with just one generation between him and slavery, Thurgood Marshall experienced its legacy of segregation and racist hatred in his own time.

Rather than allow that legacy to defeat him, however, he dedicated his life to removing its stain from our society. His courageous determination propelled him to success in the classroom, in the courtroom, and on the bench.

When he was denied admission on the basis of race to the University of Maryland's School of Law, he attended Howard University's School of Law and graduated first in his class in 1933.

When he challenged the separate-but-equal status quo in his capacity as legal director of the National Association for the Advancement of Colored People, the NAACP, from 1940 through 1961, he won 29 out of 32 cases before the Supreme Court, the most Supreme Court cases won by any attorney.

Later, as a judge on the U.S. Court of Appeals for the Second Circuit from 1961 to 1965, he would author 112 opinions, with not one of them being overturned.

Thurgood Marshall would continue his service to this country in two very distinguished capacities. He served as the first African American Solicitor General, from 1965 until 1967. That year, he was appointed associate justice on the U.S. Supreme Court, the first African American Justice, where he served until he retired in 1991.

While Justice Marshall is best known for his lead role in the cases culminating in the 1954 decision in *Brown v. Board of Education*, which laid the foundation for the dismantling of Jim Crow segregation, he fought racial segregation in every aspect of society, and this pursuit for a fair and just America made him one of the Nation's best advocates of civil rights.

In *Chambers v. Florida*, he challenged a biased criminal justice system. In *Shelley v. Kraemer*, he challenged discrimination in housing. And in *Smith v. Allwright*, he challenged inequitable voting practices.

Finally, in commemorating Justice Marshall, we acknowledge not just a good lawyer and judge, but a good man who reminded us that "in recognizing the humanity of our fellow beings, we pay ourselves the highest tribute."

Thurgood Marshall should be remembered as an individual who raised the morale, spirit and conscience of this country and who tirelessly fought social injustice throughout his life.

I ask my colleagues to join me in support of this resolution that calls upon us to recognize the important legacy of Thurgood Marshall, a man who challenged and inspired Americans to live up to the principles and ideals on which this country was founded.

I reserve the balance of my time.

Mr. GOHMERT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I again thank my friend from California, I thank the chairman of the committee, the ranking member of the committee, and those who have worked on this bill.

I rise in support of House Concurrent Resolution 381 honoring and recognizing the dedication and achievements of Thurgood Marshall on the 100th anniversary of his birth.

Thurgood Marshall, born in Baltimore, Maryland, on July 2, 1908, was the grandson of a slave. But after graduating first in his class from Howard Law School in 1933, he went on to serve as the legal director of the National Association for the Advancement of Colored People and argued over 30 cases before the Supreme Court of the United States. He won 29 of them, including the landmark decision *Brown v. Board of Education* in 1954, which held that racial segregation in public schools was unconstitutional.

Thurgood Marshall, as most people know, was later nominated to the United States Court of Appeals for the